

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTON

CENTRAL EXCISE APPEAL NO.186 OF 2006

The Commr. of C. Ex., Vapi .. Appellant.

Versus

Shri Dhruv Vyas & Another .. Respondents.

Mrs.S.V. Bharucha with Mr.K.R. Chaudhari i/by T.C. Kaushik for the appellant.

Mr.Anupam Dighe i/by India Law Alliance for the respondent.

CORAM : F.I. REBELLO &
J.P. DEVADHAR, JJ.

DATED : 20TH JULY, 2007.

P.C. :

1. The question as framed in para 4 may really not arise as in the instant case, appeal was preferred by a partner of the partnership firm. Before the Tribunal, there were two appeals; one by the partnership firm and the other by the individual partner. Insofar as the partnership is concerned, proceedings were taken out and the penalty was also imposed under Section 11AC. The learned Tribunal after hearing the parties was pleased to set aside the interest and penalty. While so doing, appeal preferred by the respondent herein was also allowed on the said count.

2. In the course of hearing, our attention was invited to Rule 26 of the Central Excise Rules, 2002

which reads as under :

"Any person who acquires possession of, or is in any way concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing, or in any other manner deals with, any excisable goods which he known or has reason to believe are liable to confiscation under the Act or these rules, shall be liable to a penalty not exceeding the duty on such goods or rupees ten thousand, whichever is greater".

3. It is contended on behalf of the respondent that the real question is to applicability and interpretation of Rule 26. It is also pointed out that the penalty could not have been imposed if the show cause notice had not proposed confiscation. In the instant case, it was not so.

4. In the circumstances, we find that the real question which ought to have been decided was not considered and decided and in the light of that the impugned order to the extent of Appeal No.3154 of 2005 is set aside and the matter is remanded back to the Tribunal for rehearing the parties and disposing of the issue in terms of the contentions as now raised before us.

5. The Central Excise Appeal stands disposed of with no order as to costs.

(F.I. REBELLO, J.)

(J.P. DEVADHAR, J.)